

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA  
Augusta Division

In the matter of:

TIMOTHY ROBERT HALE

SS# 385-74-5246

KELLY ANN HALE

SS# 391-70-6537

2346 Spring House Lane

Apartment D

Augusta, Georgia 30907

Atty., Lee Ringler

Debtors

Chapter 13 Case

Number 186-00320

**FILED**

at 2 O'clock & 06 min. PM

Date 1/7/87

MARY C. BECTON, CLERK  
United States Bankruptcy Court  
Savannah, Georgia *PCB*

ORDER DISMISSING CASE

This case was subject of an Order dated October 3, 1986, denying confirmation. At that time the Court declined to dismiss the case because there was no pending motion by any party in interest that the case be dismissed. Subsequent to that time Congress has enacted the 1986 Amendments to the Bankruptcy Code. Section 203 of that act amends 11 U.S.C. Section 105(a) to add the following provision:

"No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process."

11 U.S.C. §1307 provides that on request of a party in interest a case may be converted or dismissed based on denial of confirmation of a plan and denial of request for additional time to file another plan or a modification thereof. The Debtors have made no such request for additional time and indeed have had a period of over three months in which a modification, conversion or dismissal could have been sought. The Debtors' inaction in this respect simply underscores this Court's previous finding that the Debtors were not acting in good faith when their Chapter 13 plan was proposed. The Debtors were notified in the original

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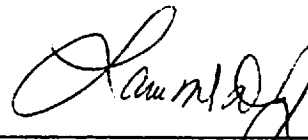
order of Judge Coolidge dated April 10, 1986, that the Court, at the hearing on confirmation, would consider the question of conversion or dismissal.

Having heard evidence from both Debtors at the time as well as argument of their counsel, I concluded at the time of my October 3rd order that the case should be dismissed. However, because of what I considered controlling precedent in this circuit (In re Moog, 774 F.2d 1073) I declined to dismiss the case at that time. Congress has now clarified what was previously an ambiguity in the law by making it crystal clear that the Court has the power on its own motion to take action even in the absence of a request by a party in interest. It seems altogether necessary and appropriate for the Court to have such power and now that Congress has clarified the matter, I hereby take the opportunity to do so.

Accordingly, IT IS THE ORDER OF THIS COURT that the above-captioned case will stand dismissed as of February 10, 1987.

The Court will, however, retain limited jurisdiction for the following purpose:

Secured creditors are directed to file **NOT LATER THAN JANUARY 30, 1987**, any claim they may have for an administrative expense claim arising out of the accrual of monthly installment obligations during the time this case was pending pursuant to 11 U.S.C. Section 503(b)(1)(A). In the absence of such an application, the Trustee is authorized to return payments received from the Debtors during the pendency of this case to the Debtors pursuant to 11 U.S.C. Section 1326(a)(2). However, if such an application is filed, the same will be set down for a hearing and further consideration.



Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 7<sup>th</sup> day of January, 1987.

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